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Wednesday, August 22, 2007

Personal jurisdiction before sovereignty

Today the concept of personal jurisdiction -- the freedom of a government to take action against a particular person for the purposes of enforcing a law -- is largely based around the idea that a "sovereign state" has personal jurisdiction over the persons and activities within its territory. But in many times and places this has not been so. Under the system of political property rights in most of medieval Western Europe, for example, the kings had their political property rights, and the lords had theirs. Both were governed by the same basic laws of property, including laws of right (title), trespass, and inheritance. The result was a sophisticated system of jurisdiction based on property rights rather than sovereign rule.

Both kings and lords had an incentive to respect each other's political and economic property. This is illustrated by a speech that Shakespeare puts into the mouth of Duke of York in *Richard II*, when King Richard is threatening to (under somewhat dubious legal arguments) confiscate the exiled Duke of Hereford's estates and franchises (i.e. both his economic and political property rights). Indeed, a major theme of the tragedy is that since the king failed to respect political property rights, his own end up being overturned. Note that "royalties" and "franchises" are synonyms used for political property rights -- they are the same kinds of property rights as the king himself holds, and alliterative redundant pairs like (e.g. "royalties and rights") were common in legal language as well as in Shakespeare:

> O my liege,
> Pardon me, if you please; if not, I, pleased
> Not to be pardon'd, am content withal.
> Seek you to seize and gripe into your hands
> The royalties and rights of banish'd Hereford?
> ....
> Take Hereford's rights away, and take from Time
> His charters and his customary rights;
> Let not to-morrow then ensue to-day;
> Be not thyself; for how art thou a king
> But by fair sequence and succession?

The king's own rights to his realm are, in other words, based on the same property law as the jurisdictions of the dukes, burghers, and

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Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

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"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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other franchise owners. Abrogate the law for others and it could easily be abrogated for the king. But the long era of political property rights would end with the coming of republicansim and democracy because Parliament and other legislatures do not share this coincidence of interests. Only the dawn of an independent court saved economic property rights in England and America -- but it was insufficient to save political property rights, especially those of jurisdiction which the "sovereign" courts seized for themselves.

The late medieval English case of *Upton v. Le Mazerer* provides a great illustration of personal jurisdiction based on political property rights rather than sovereignty. To get the most out of the following you should have a basic idea what a life estate and reversion are. The basic issue of the case is whether the the tenant holds property of the lord as a "sokeman" tenant (in which case the lord has jurisdiction) or whether the lord had granted the tenant a release from jurisdiction, making the tenant a "frank" tenant which meant the king had jurisdiction. The meanings of all these will become clearer as you read through the following description of the case, taken from my paper "Jurisdiction as Property."

Our cast has several players:

(1) Lord Hugh, ancestor of the current lord.

(2) Hugh, a tenant of the Lord Hugh. As the curtain opens on the facts of the case, Hugh is a sokeman tenant of Hugh the lord, and thus Hugh the lord starts with personal jurisdiction over Hugh the tenant.

(3) The current lord, heir of Lord Hugh.

(4) The current tenant, heir of Hugh the tenant.

> In Upton v. Le Mazerer a “writ of right according to the custom of the manor,” a dispute over lands of the manor, was removed...from the manorial court because the tenant party claimed to hold in frank-fee rather than as a sokeman of the lord of the manor. If this was the case the king, not the lord of the manor had personal jurisdiction over the tenant.
>
> The agreed facts were that Hugh, ancestor of the current lord, had granted to Hugh, a sokeman tenant (i.e. a tenant then under the jurisdiction of Hugh the lord), the same lands that Hugh already held of his lord, but in “frank,” thus releasing Hugh the tenant from the lord’s to the king’s jurisdiction. The current tenant, a successor to the tenant Hugh, claimed the grant was frank-fee, i.e. [in the king's jurisdiction] “for all time”, while the current lord, an heir to Hugh the lord, agreed that it was a grant of freedom from the lord’s jurisdiction but argued that the grant was only for “a term of life.” The current lord, heir of Hugh the lord, argued that “we are claiming these tenements as ancient demesne from the seisin of [our] ancestor, which is higher in time than this deed” In modern terms, the lord of the manor was claiming that the tenant now held only the reversion of the life estate, which was just the original sokeman fee held of the lord of the manor, and thus that the lord of the manor had regained jurisdiction over the tenant. The outcome of the case thus hinged on whether the grant adding to the tenancy freedom from the lord’s jurisdiction was for a term of life or a perpetual fee. The outcome of this factual issue was not reported, but the reporter observed that “if it be found that Hugh [the tenant] had fee, the original writ, which remained in the lord’s court, would abate...[a]nd if it be found that he only had for a term of life, then the parties shall go back to the lord’s court, and plead with regard to the original etc.” The personal jurisdiction of each court was entirely contingent on the outcome of the property issue: as one Scrope (either a justice favorable to the lord, or one of the lord’s barristers) observed, “[t]he scope of the averment is only to determine whether the tenements ought to be tried here or sent back to the lord’s court.” The reporter also noted main property law issue on which jurisdiction hinged: “[w]hen a man recovers tenements from his ancestor’s seisin, he shall recover the tenements in the state wherein his ancestors held them, and all deeds made in the meantime between the ancestor’s recovery and the seisin will be defeated by this recovery.”

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